

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ELIXIR THERAPEUTICS, LLC,

Plaintiff,

v.

**TNR HOLDING GROUP, Inc.; PODS
HEALTH, Inc.; WAREHOUSE
HOLDINGS, Inc.; RICARDO BLANCO
FLORES; JOSE ARRAS; RAFAEL
MANSO; DEEPAK PODDAR; JAMES
DAVIS; SEAN MCINERNEY,**

Defendants.

Case No. 3:21-cv-1560-AR

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Jeffrey Armistead issued Findings and Recommendation in this case on June 9, 2023. Judge Armistead recommended that this Court deny Plaintiff's motion for default judgment against Defendants Warehouse Holdings, Inc. and Sean MCinerney, without prejudice to renew and correct the identified deficiencies. No party has filed objections.

Under the Federal Magistrates Act (Act), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party objects to a magistrate judge's findings and recommendations, "the court

shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Armistead’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court ADOPTS Judge Armistead’s Findings and Recommendation, ECF 32. The Court DENIES Plaintiff’s Motion for Default Judgment, ECF 29, without prejudice to file an amended motion that cures the deficiencies identified by Judge Armistead.

IT IS SO ORDERED.

DATED this 26th day of September, 2023.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge